

Council Meeting of May 14, 2014

Agenda Item No. *9a*

REQUEST FOR COUNCIL ACTION

SUBJECT: Reconsideration of action taken May 7, regarding the Stone Creek Assessment Area [Mayor Rolfe]

- Updates and modifications to the Community Room at the Justice Center.
- Provided the Council with a recent event held by the Exchange Club.

CITY COUNCIL COMMENTS/REPORTS

There were no Mayor or City Council comments.

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IV. CITIZEN COMMENTS

There was no one else who desired to speak.

V. PUBLIC HEARING

RECEIVE PUBLIC INPUT AND CONSIDER FOR APPROVAL ORDINANCE 14-15, DESIGNATING AND ESTABLISHING THE STONECREEK ASSESSMENT AREA

Richard L. Davis reported that an Assessment Area covering The Stone Creek area would become immediately operational to provide additional revenue for maintenance of public improvements constructed within Stone Creek. The City had committed to provide 20% of the maintenance budget for the Assessment Area to assure that property owners in Stone Creek get the benefits of Citywide park maintenance assured generally through the payment of property taxes.

The City Council previously adopted a Resolution of Intent to create The Stone Creek Assessment Area and approved a form of Notice that was sent out to all property owners in the proposed Assessment Area informing the property owners of the proposal to create the Assessment Area and providing these property owners with all of the information needed to make an informed choice whether or not to protest the creation of the Assessment Area, including the proposed 2014 Assessment Levy. The Notice provided a 60-day period from the date of the Notice within which period a property owner in Stone Creek could submit a written protest. Fewer protests were received following the required publication and mailing of the Notice than were required to legally derail a proposed assessment area. Therefore the City Council may now ahead to designate and establish the Assessment Area and assess the 2014 Assessment Levy.

This Assessment Area would provide funds to support the ongoing maintenance of open space public improvements within the Stone Creek Master Development Area. The approval of the assessment area would also trigger action by the staff to subdivide and develop residential lots inside of Stone Creek for the purpose of sale, the proceeds to be used to improve the existing public improvements within Stone Creek.

Staff recommended moving forward with the Ordinance Designating and Establishing the Stone Creek Assessment Area.

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Robert Thorup provided a history of the purpose and process for the Stone Creek Assessment Area. He reviewed the steps required to assess the levy.

Councilmember Stoker questioned if the assessment could be included on the residents property tax rather than on the utility bill. He felt the majority of property owners would prefer to have the assessment included with their annual property taxes.

Robert Thorup indicated staff had researched the options, and even if the assessment was added to the property tax, it would not be deductible because it was not a tax.

Councilmember Stoker asked if the fee was added to the utility bill, was there protection of not changing the fee with four votes of the Council.

Robert Thorup stated no. Certainly the assessment area fee could not be changed without a public hearing and decision by the City Council. He said the budget would change from year to year, and therefore a need to amend the fee.

Councilmember Stoker asked how the boundary area was created, specifically the south end.

Robert Thorup clarified the decision was made to follow the actual Stone Creek development boundaries.

Councilmember Stoker felt there should be a procedure established to set a certain threshold of a maximum assessment.

Councilmember Hansen agreed that there should be a cap on the assessment fee. She was in favor that the open space to be sold, and developed into residential lots.

Councilmember Southworth asked if this process was similar to a 'Truth in Taxation' hearing.

Robert Thorup said they were similar because they were public hearings, however, different because they have different procedures that must be followed.

Councilmember Haaga addressed the Boulder Canyon Apartments, and if the law allowed their voice to be heard with the assessment area.

Robert Thorup stated the law only allows property owners to protest.

Councilmember Haaga asked staff if the owner of the Boulder Canyon Apartments was ever invited to attend any of the Committee meetings, or open houses to voice their opinion on the issue.

Robert Thorup stated he doubted because the owner was out of state.

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Councilmember McConnehey said he spoke with a property owner in the area, and he indicated that he had an assessment levy already on his property tax, that he felt was for this area.

Richard L. Davis said there was currently no assessment to this area, if the City did it would be placed on the utility bill. Also, if a resident was paying an assessment from a third party, staff was not aware of any activity relative to the maintenance and improvement of this area.

Councilmember McConnehey requested staff to research further if the fee could be assessed to the property tax bill. He was in favor of this option. He voiced his frustration that the PowerPoint presentation had not been provided to the Council in advance.

Councilmember Southworth asked for clarification if the property owner of the Boulder Canyon Apartment complex had been notified of any/all previous meetings.

Bryce Haderlie said his understanding was that the citizens, who had attended the previous meetings, had been in contact with Rick Davis voicing their frustrations. Because of these communications they were invited to come and participate. He was not aware of going to all of the assessment area and invite all who wanted to attend those meetings. However, they did hold open houses very late in the process to receive input from citizens if they were interested. The required notification was followed as prescribed by law, but not for the informal meetings.

Mayor Rolfe opened the public hearing.

John Slippey, 8113 South Red Springs Way, asked how many supported the assessment area and the levy. He said it still felt like a tax. They paid extra money on the lot because of the promised open space. He felt because the area was used by everyone in the City, it should be paid for by all residents. They see vehicles and people using the parks all the time. His children were not comfortable using the parks because of the gangs, and crime that happens in the parks. This was an assessment that should not be charged to only the residents in the area.

Ray Stewart, 5017 West 8180 South, felt the whole process was being forced on the residents by the City Manager and City Attorney's Office. He attended the meetings where there were many residents who were against the assessment area. He wanted to know why the parks were in such need of money. The City should live within their budget, and there should be enough money to pay for it. They say there would be natural grasses planted, and there already was so why charge the residents. He was totally against the fee, because Peterson Development should have built it.

John Ormond, 4967 West 8090 South, said there were hundreds of citizens at the first open house that was held at the Copper Hills High School, who were overwhelmingly against and opposed to the assessment. When the developer sold lots, the buyers were told

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the open space would be taken care of by them, and it had not been. The assessment area was unfair. Because it was City owned property, the entire City should pay for the development and upkeep. He felt 17% opposition could not construe as 83% favor the area, especially with the outcry against at all the public meetings. He asked the Council to not punish the citizens because the City did not want to cut the weeds. He felt that 99% of the individuals attending the meeting opposed the assessment.

Nichol Barnett, 8017 Big Spring Drive, said she would love to see some improvements; however, she was very unhappy with the boundaries of the assessment area. There were areas south that were not included, and use the open space all the time. She strongly felt there should be a cap on a fee. It was not fair that the assessment would be levied on this small area, when the entire City could use it.

Michelle Vangiesen, 5012 West 8090 South, said she had a very difficult time having a public park paid for by a small group of citizens. There were many sport teams out of West Jordan who use two of the parks for practices, with many kids from neighboring areas using the parks. There were times when my family wants to use the park; however, it was occupied by outside people. The whole concept of taxing a small group for 80% of a public park, made no sense. She did not understand why they were being singled out. There were many neighborhoods that were built after Stone Creek, that include City parks, and that was not the case. She moved from a neighborhood about a mile from where she lived now, that had a City park of almost the same size. She also had a problem that there was no cap, the boundary and the access from properties not included. She did not understand how selling lots would supplement the amount the residents had to pay. She asked the Council to vote against this, because the majority of residents were against it.

Jonathan Ware, 5106 West 8180 South, agreed with all of the comments previously made. He and his wife were involved from the very beginning. He felt they were never going to get what Peterson was promising. This was not a private park area. He addressed the surrounding parks north of the area: Grizzly Park, Mountain Shadow Park, West Jordan Meadows A & B Parks, and one other park that were irrigated, maintained, and paid for by the City. He also agreed that the parks in Stone Creek were always used by outside people. He did not agree with the 17%, and felt the 83% not responding did not equate to a yes vote.

Robin Stelter, 4953 West 8090 South, said they moved in their home in 1999, and were told at that time that Peterson was going to develop a nice area, and also maintain it, and this was the reason they paid more for their lot. Years later, they were told there may be an assessment for the area. This was unfair, because it was being used by the general population of West Jordan (i.e., basketball teams, soccer teams, baseball teams, football teams, etc.). She said there was not natural grass it was weeds that grow. She felt the area was not aesthetically pleasing, and would appreciate improvements; however, it was being used by the general population. The entire walkway was used by children going to the Middle School and High School. Singling out only the Stone Creek area for the assessment was very unfair.

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Michael Peterson, 8966 South 3860 West, said he had been to parks, and felt they were boring, just grass, and only have a few things there. The parks he had been to have graffiti, inappropriate things, and things that were not okay for children to see.

Sara Hatch, 8029 South Copper Canyon Way, agreed with most of the comments made. Another area that should be looked at was between New Bingham and Amethyst Way and should be included in the area. She was against the assessment area, but felt there should be a cap. There should be an assessment City-wide, and not just for the Stone Creek area.

Lanae Sorensen, 8124 South Copper Canyon Way, said the boundaries proposed were not the original boundaries for the Stone Creek Assessment area. When she moved in over 10-years ago, she came to the City to research the area. She was told by City staff at that time that her home was not part of the assessment area, or the homeowners association, and did not have any say. The boundaries had changed. What was done with Peterson was a mistake and could not be undone, and a tragedy for those who paid a higher premium on their lot. The residents should not pay additional fees to have the issues fixed, was a problem with the City. They should be the advocate for the citizens. She felt because the City allowed Peterson to not develop the open space, and turned the property over to the City, the City was responsible. Peterson should not be allowed to continue developing in the City, and should be held accountable for what they had done. If the assessment was approved, along with the proposed Park fee Citywide, they would be double taxed.

Rob Kessler, 8059 South Copper Canyon Way, said the residents love the promise of a beautiful park. When the development was originally proposed, there were big promises that drew people to West Jordan. He was encouraged that the City was looking at a park and open space fee Citywide to maintain the parks, including this area and assessed by all residents.

Morgan Slippey, 8113 South Red Springs Way, said she had live there most of her life. When she moved in there, they were promised parks that would be maintained. This had never happened. With this tax coming now, it upset her because they were being singled out because it was a City park.

Ron Cole, owner of Boulder Canyon Apartments, said he was not in favor of the assessment. No matter how it was defined it was a tax. He said there were 622 property owners notified, and he was only one of those. There were 280 units on the property, with more than 400 adults, voters in the City, and more than 75 children as well. The fact was that if you look at the notice, it said 717 ERU's; Boulder Canyon has 280 of those ERU's, making their participation at 39% responsible for the assessment. There were a lot of meetings, however, was only notified of the open house held in late 2013, but not any of the Committee meetings. Their view was not heard. He pays \$230,000 in property taxes, and would have an assessment of \$23,000 per year, which was a 10% increase to his taxes. He was a business owner who provides a nice place for people to live who choose to rent

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or need to rent, this cost would ultimately be passed on to the renters. He was also concerned that there was no cap on the assessment.

Sheldon, 5054 South 8180 West, said with the climate change and the amount of green space the City has, why would we want to take on the additional responsibility to maintain additional parks. The area would eventually need Police protection, lighting, etc., because parks typically bring in problems. He addressed the recent voter turnout of 20%. He stated with the 100+ protests and there were over 600 property owners, that the other percentage because of their silence was apathy. They do not know what to do, and become frustrated. He felt the Council should ask the following questions of those in attendance: 1) How many want the Park; 2) How many want to pay for the Park, and 3) Do you think we need the Park. He felt this would be a dead issue.

Julie Ware, 5106 West 8180 South, stated she had been part of the Stone Creek Committee, and participated in all of the meetings. She had been against it the entire time. A few of the other Committee members just wanted to get anything approved, and push it through. This was not what the majority of the members think. She stated there were several surrounding residents who were against the assessment area for the Stone Creek residents; however, they could not have a vote on the issue. The area was not private. The improvements would be to plant the grass, and let the wild grasses grow. She addressed the surrounding City parks (Grizzly, Mountain Shadows, and West Jordan Meadows) within two miles there were three huge parks with grass, and no assessment. The area must be part of the entire park system, and utility fee. There may have only been 100 protests; however, there were many more who are against the assessment. She discussed the area, and felt it should be included in the entire Citywide park and open space fee.

There was no one else who desired to speak.

Mayor Rolfe stated before he closed the public hearing, he asked for those in favor of the assessment area to raise their hands (there was no one in attendance in favor). He then asked those opposed to the assessment area to raise their hands (everyone in attendance raised their hands).

Mayor Rolfe closed the public hearing portion of this agenda item 5a.

Mayor Rolfe stated that before any of the current Council members were elected, the previous Council decided to have the parks placed in an HOA fee area. Many of the property owners paid more for their lots on the promise that that happen. The current Council was trying to deal with a bad situation.

Councilmember Southworth asked for an update on the timeframe for a decision regarding the park, trails, and open space utility fee.

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Richard L. Davis said there had been two meetings held, with two additional scheduled during the next two weeks. There was no specific deadline or schedule for a decision. Staff was in the process of conducting a survey.

Councilmember Southworth felt the Citywide utility fee played a large part with his support of the assessment area. He knew there were many who were in favor of the assessment area. He felt it was not fair to place an assessment on the Stone Creek area, and then an additional fee Citywide. There was a desire to increase the maintenance to Stone Creek, and if there was only the Citywide fee, they would compete with all of the parks. He felt this may be premature to make a decision now.

Councilmember Haaga said the City received 102 protests of the 622 property owners. He indicated that if you consider the 280 Boulder Canyon Apartments units, and because the property owner opposed the assessment, this would put the total amount of protests over the 51%, making this a dead issue, and should go away. He addressed the Citywide utility fee, and felt citizens were already assessed through the property tax. He agreed that the City parks had been neglected. He felt the assessment area was not necessary because there was sufficient money available through the \$12 million Fund Balance.

Councilmember Stoker clarified that the assessment would only pay for the maintenance of the open space, after the City makes the improvements. He understood that if a Citywide fee were assessed, it would not stack on top, and that the Stone Creek fee would be decreased.

Richard L. Davis indicated that was correct, and actually the Council could completely eliminate the Stone Creek Assessment fee all together, if there were a Citywide fee.

Councilmember McConnehey addressed the area to the North with a large number of parks that seem comparable. However, they serve a larger area of residents, in comparison to the Stone Creek open space. He felt Stone Creek development did have a large amount of open space that should require a separate assessment to help offset the maintenance. The comment was made that the City should hold the developer to what was planned. What was originally planned was an assessment area to help pay for those; so to say we do not want to pay for the open space, then maybe the excess open space should be removed. To be fair to the entire City, you would have to remove 80% of the open space. He agreed with Councilmember Stoker in that this was premature because of the consideration of the Citywide utility fee. He appreciated the comments made by Sheldon regarding the voter turnout in comparison to the participation with the area; and comments made by Mr. Cole regarding his perception about ownership verses property ownership. He also agreed with Councilmember Haaga comparison of the 717 residential units, assuming 102 protests from single family residential, and one from Boulder Canyon, that would be an additional 280 protests, which meant 381 of the 717, would be 53.1% protests against. He did not know how the Council could support the proposal with over 50% against.

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MOTION: Councilmember Haaga moved that the City Council deny Ordinance 14-15, designating and establishing The Stone Creek Assessment Area and Levying the 2014 Assessment Levy, all as set out in the form of Ordinance and the published Notice. The motion was seconded by Mayor Rolfe.

Councilmember Stoker said he agreed with several comments made by Councilmembers' McConnehey and Southworth. He felt something must be done in the area because of the complaints he received on a monthly basis. Again, he felt this was premature with the Citywide utility fee undecided. He was in favor of holding off until the discussion developed on the Citywide solution.

Councilmember Haaga addressed the Citywide utility fee; however, at this point there was no direction regarding this park fee. He spoke in favor of his motion, stated that during 2014, the City increased the General Fund Budget by \$4 million, and did not know why it was not put towards parks. He felt there would be a surplus for the next few years, and the funds should go towards the City parks, and not assess any type of fee.

Councilmember Southworth spoke against the motion and felt the item should be tabled until the Citywide park fee was determined.

Councilmember McConnehey agreed with Councilmember Stoker; however, he did not feel he could support the assessment area. He was not sure what would happen if the Assessment area was denied. He addressed possible options for the Council to consider, and what responsibility the City had. He questioned whether the item should be tabled or outright denied, and then proceed again in a year.

Robert Thorup indicated the State Code did not contemplate anything regarding tabling an item. He felt if the item was tabled for a month or two that should not be a problem. However, if the Council tabled the item for over a year, the City would need to begin the process again.

Councilmember McConnehey stated based on that comment, he would be in favor of the motion to deny.

Councilmember Hansen spoke against the motion, and agreed with Councilmember Stoker. She felt the Citywide park utility fee could help maintain the area, and the Council was premature on deciding if the assessment area should be created at this time.

Councilmember Stoker clarified the \$4 million budget adjustment that was made two months ago. He stated if the motion were to fail, he would propose a motion to table the discussion, because of the time and effort that had been invested in the process, for a date uncertain up to six months. This would allow the Council time to consider the Citywide utility fee.

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Councilmember Haaga clarified the \$4 million were reserves in the Fund Balance, which placed the City over \$980,000 over the State required 25%. The Mayor recently received a letter from the State Auditor indicating the City was again over the 25% by \$2 million. The General Fund had increase from \$49 to \$54 million. The Fund Balance was approximately \$12 million. During the Council Strategic Planning Retreat in January, the Council was unanimous that something must be done by the end of the 2014 calendar year, to improve the City's parks.

Mayor Rolfe said he did not hear from any of the residents that were in favor of the assessment area. He had received many emails protesting the area, without any in favor. He felt the Council could not 'kick-the-can' down the road, and should make a decision.

A roll call vote was taken.

Councilmember Haaga	Yes
Councilmember Hansen	No
Councilmember McConnehey	Yes
Councilmember Nichols	Absent
Councilmember Southworth	No
Councilmember Stoker	No
Mayor Rolfe	Yes

The motion failed 3-3

MOTION: Councilmember Stoker moved to postpone this item until a date uncertain not to exceed 3 months, and with the clarification of noticing again. The motion was seconded by Councilmember Southworth.

Councilmember McConnehey spoke against the motion due to the issue of notification.

Councilmember Haaga was not in favor of continuing this item. He understood that State law did not allow tabling the item. He challenged the City's legal team to determine differently, because he felt it violated the Title 42, regarding Assessment Areas.

The Council and staff discussed the steps taken to get to the public hearing, and consideration of establishing the assessment area. It was stated that the public hearing was scheduled with the intent of beating a State Statue with a possible moratorium effective May 13.

Councilmember Haaga asked if the Council established the assessment area, would the residents have any legal recourse against this assessment.

Robert Thorup said yes, if the assessment area were approved and a fee assessed, a property owner had 30-days to sue in Third District Court.

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Councilmember Haaga said he was opposed to the motion. The only thing left would be the 30-days to seek legal advice, and possibly protest it through a legal channel. The Council should be responsible and want to avoid having our own residents file a lawsuit against their City, and should deny the area tonight.

Mayor Rolfe felt passing the motion would be premature due to the discussion of the Citywide utility fee. If in fact something did not solve the park problem through the utility fee, the assessment process could come back. He encouraged the Council to deny the motion, and the Special Assessment Area.

A roll call vote was taken

Councilmember Haaga	No
Councilmember Hansen	No
Councilmember McConnehey	No
Councilmember Nichols	Absent
Councilmember Southworth	Yes
Councilmember Stoker	Yes
Mayor Rolfe	No

The motion failed 2-4

Mayor Rolfe stated the Council was at an impasse, and asked if there was any other motion that a Councilmember would like to make.

Councilmember Southworth clarified that the only one left was to pass the ordinance, and he did not know that it had support to do that. He did not know if he was in favor of approving it. Short of doing that, taking no action, would that table the item?

Mayor Rolfe stated no, it would fail.

MOTION: Councilmember Haaga moved to deny the Stone Creek Assessment Area that was proposed.

Councilmember Southworth asked if procedurally the Council could make this motion, since it was made earlier in the evening, and failed.

MOTION: Councilmember Southworth moved to take a five-minute recess. The motion was seconded by Councilmember McConnehey and passed 6-0 in favor.

The Council recessed at 7:59 p.m. and reconvened at 8:06 p.m.

Melanie Briggs read Utah State Code 11-42- 204.

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MOTION: Councilmember Stoker moved to continue the item to Wednesday, May 28, to allow Councilmember Nichols to participate. The motion was seconded by Councilmember Southworth.

The Council discussed what would be an acceptable date to continue.

Councilmember Haaga asked Robert Thorup for clarification regarding the process to set up the assessment area, and then establishing the levy.

Robert Thorup stated that was correct.

Councilmember Haaga asked if the Council was deciding on a levy, or an assessment area?

Robert Thorup stated both.

Councilmember Haaga asked what the levy the residents would pay was.

Robert Thorup said as proposed in the ordinance \$6.66.

Councilmember Haaga spoke against the motion on the grounds that it would set the City up for a lawsuit, and it was irresponsible.

A roll call vote was taken

Councilmember Haaga	No
Councilmember Hansen	Yes
Councilmember McConnehey	Yes
Councilmember Nichols	Absent
Councilmember Southworth	Yes
Councilmember Stoker	Yes
Mayor Rolfe	No

The motion passed 4-2

VI. BUSINESS ITEMS

DISCUSSION AND POSSIBLE ACTION REGARDING RESOLUTION 14-81, APPROVING THE DESIGN, CONSTRUCTION, AND THE LOCATION OF THE MONUMENT SIGN FOR THE SIERRA NEWBOLD PLAYGROUND AT RON WOOD PARK

Richard L. Davis said City Council previously approved the naming of the playground at Ron Wood Park the Sierra Newbold Playground and gave staff direction to complete a design for a memorial monument at the playground. The monument was designed to place metallic balloons on the wall to recognize donors that contributed funds for the